


MAR 25 2013

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

KHAYR ROOKS,  
Petitioner,

v.

WARDEN EDDIE L. PEARSON,  
Respondents.

) Civil Action No. 7:13cv00117  
)  
)

) MEMORANDUM OPINION  
)

) By: Samuel G. Wilson  
) United States District Judge

This matter is before the court upon Rooks' "motion for an extension of time" which was docketed as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, Rooks raises no substantive § 2254 claims in his motion, and, therefore, the court lacks jurisdiction to consider it. Accordingly, the court dismisses this action without prejudice.

Federal courts lack jurisdiction to consider the timeliness of a § 2254 petition until it is actually filed. Gregory v. Bassett, No. 3:07cv00790, 2009 U.S. Dist. LEXIS 13766, 2009 WL 455267, at \*2 (E.D. Va. Feb. 23, 2009); see also United States v. White, 257 F. App'x 608, 609 (4th Cir. 2007) (holding that no case or controversy existed before § 2255 motion was actually filed); United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000) (holding that no case or controversy existed before § 2255 motion was actually filed). Because Rooks' motion did not contain any statement of his claims for habeas relief or indicate the judgment he seeks to challenge, Rooks' motion for an extension of time will be denied and this action is dismissed without prejudice. See Ramirez v. United States, 461 F. Supp. 2d 439, 440-41 (E.D. Va. 2006) (citing cases).

ENTER: This 25<sup>th</sup> day of March, 2013.

  
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United States District Judge